

Notice of Allowability

Application No.

10/074,524

Examiner

Charles A. Marmor, II

Applicant(s)

EMKEN ET AL.

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Amendment filed 03 December 2004.
2. ☒ The allowed claim(s) is/are 1-23.
3. ☒ The drawings filed on 11 February 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

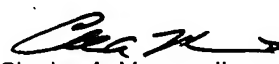
* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


Charles A. Marmor, II
Primary Examiner
Art Unit 3736

EXAMINER'S AMENDMENT

1. This Office Action is responsive to the Amendment filed December 3, 2004. The Examiner acknowledges the amendments to the Specification and the amendments to Claims 1-4, 6, 7 and 10. Claims 1-23 are pending.

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

In paragraph [0010], line 17, "segments 54, 52" has been changed to --segments 52, 56--.

3. The following is an examiner's statement of reasons for allowance:

No prior art of record teach or fairly suggest an apparatus including at least one monofilament wire-form having an expanded configuration pre-formed with multiple lobes arranged in a radially symmetrical staggered sequence along a center line corresponding to a center line through a catheter such that each lobe extends from the center line to an apex adapted to engage a wall of a body lumen, and a collapsed configuration where the proximal and distal ends of the wire-form are drawn apart to form the wire-form compactly about the center line, where the monofilament wire-form is adapted to radially center a treatment region of a brachytherapy catheter in a body lumen.

The closest prior art of record comprises U.S. Patent No. 5,350,419 (Bendel et al) and U.S. Patent No. 6,607,479 (Barnhart). Bendel et al. teach a monofilament formed of a shape memory material having a portion with a similar shape and properties to the claimed invention of the present application; however, the anchoring portion of the lead of Bendel et al. does not appear to be capable of housing a catheter along its "center line", nor of centering a catheter within a body lumen. Barnhart teaches a brachytherapy positioning system having a plurality of sinusoidal wire-forms disposed about a radiation source; however, none of the wire-forms of Barnhart appear to have multiple lobes arranged in *a radially symmetrical staggered sequence along a center line* as defined in paragraphs [0008] and [0009] of the specification of the instant application.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Marmor, II whose telephone number is (571) 272-4730. The examiner can normally be reached on M-TH (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Charles A. Marmor, II
Primary Examiner
Art Unit 3736

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February 18, 2005